



U.S. Department of Justice

United States Attorney
Eastern District of New York

271 Cadman Plaza East
Brooklyn, New York 11201

February 28, 2019

BY ECF

Honorable Vera M. Scanlon
United States Magistrate Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Amadei, et al. v. Nielsen, et al.*, 17-CV-5967 (NGG) (VMS)

Dear Judge Scanlon:

This Office represents the Government Defendants in the above-referenced matter, which alleges that Plaintiffs' Fourth Amendment rights were violated when they were asked to show identification as they deplaned an arriving domestic flight at JFK Airport. Defendants write respectfully to object to Plaintiffs' February 28, 2019 letter (Dkt. Entry No. 102), which in turn objects to this Office's filing of an *ex parte* declaration setting forth the basis for the Government's assertion of the law enforcement privilege regarding the "by-pass" training material. Plaintiffs challenge the propriety of the Government filing a declaration *ex parte*. However, the Government's *ex parte* application was discussed during the February 12 status conference, wherein the Court asked "what is defendants' proposal for showing this is privileged?" Government counsel responded by stating: "we can have someone from CBP prepare a declaration or an affidavit *to be provided to your Honor* under seal and then your Honor can make a ruling." The Court agreed to this procedure. Plaintiffs raised no objection. *See* Feb. 12 Hr'g Tr. 49:24 – 50:5 (emphasis added).

Thus, we ask the Court to reject Plaintiffs' objection to the Government's *ex parte* submission, and to review and uphold the Government's assertion of the law enforcement privilege over the "by-pass" training material.

We thank the Court for its attention and consideration of this matter.

Respectfully submitted,

RICHARD P. DONOGHUE
United States Attorney

By: /s/
Dara A. Olds
Matthew J. Modafferi
Assistant U.S. Attorneys